

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED

BILLINGS DIV.

2007 NOV 15 PM 2 40

PATRICK E. DUFFY, CLERK

BY

DEPUTY CLERK

CHRIS ROMERO, ROGER BODINE,)
and DAVE VALDEZ,)

Plaintiffs,)

vs.)

YELLOWSTONE COUNTY, SHERIFF)
CHUCK MAXWELL, JAY BELL,)
RICO BRENNAN, BILL O'CONNOR,)
and O'CONNOR & O'CONNOR, P.C.,)

Defendants.)

CV-06-104-BLG-RFC

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE

On October 19, 2007, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends this Court deny the O'Connor Defendants' Motion to Dismiss.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the October 19, 2007 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate

Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

First, the issue to be considered is whether Plaintiffs must exhaust state remedies before prosecuting their § 1983 claims against the O'Connor Defendants in federal court. The general rule is that a plaintiff is not required to exhaust state administrative remedies before bringing a § 1983 action in federal court. "[E]xhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983 ." *Patsy v. Bd. of Regents of the State of Fla.*, 457 U.S. 496, 516 (1982).

Second, the doctrine of claim preclusion does not preclude the Court's consideration of Plaintiffs' § 1983 claims against the O'Connor Defendants because, at this time, there is no final administrative determination on Plaintiffs' claims against Bill O'Connor.

Accordingly, **IT IS HEREBY ORDERED** that the O'Connor Defendants' Motion to Dismiss is **DENIED**.

The Clerk of Court shall notify the parties of the making of this Order.

DATED the 15 day of November, 2007.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE